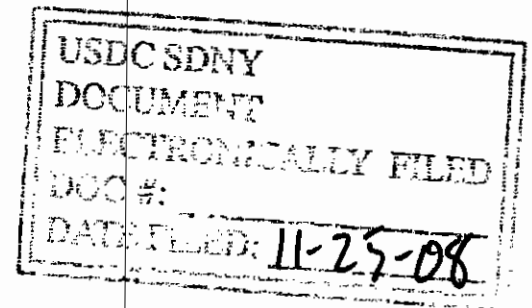


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

- against -

STEVEN BYERS, JOSEPH SHERESHEVSKY,  
WEXTRUST CAPITAL, LLC, WEXTRUST  
EQUITY PARTNERS, LLC, WEXTRUST  
DEVELOPMENT GROUP, LLC, WEXTRUST  
SECURITIES, LLC, and AXELA  
HOSPITALITY, LLC,

Defendants.

MEMORANDUM DECISION

08 Civ. 7104 (DC)

**APPEARANCES:** (See last page.)

**CHIN, District Judge**

G&H Partners AG ("G&H") moves for leave to intervene in this action pursuant to Federal Rule of Civil Procedure 24(a) as a matter of right. G&H claims that it has an interest in "valuable property and claims" that can be "lost or otherwise jeopardized." (G&H Am. Mem. 1).<sup>1</sup> For the reasons set forth herein, the motion is denied.

To intervene as of right under Rule 24(a), a party must "(1) timely file an application, (2) show an interest in the action, (3) demonstrate that the interest may be impaired by the disposition of the action, and (4) show that the interest is not protected adequately by the parties to the action." N.Y. News,

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<sup>1</sup> Citations to "G&H Am. Mem." refer to the Amended Memorandum in Support of G&H Partners AG's Emergency Motion for Leave to Intervene.

Inc. v. Kheel, 972 F.2d 482, 485 (2d Cir. 1992). Here, G&H has not shown the fourth element -- that its interests are not adequately represented by the Securities and Exchange Commission ("SEC") and the Court-appointed receiver (the "Receiver").

This is an enforcement action brought by the SEC to, among other things, address the alleged fraud perpetrated by defendants and to recover defendants' assets and the proceeds of their purported scheme for the benefit of defrauded investors and creditors. Although not all investors and creditors share the same interests, it is in all their interests to maximize the value of the assets under the receivership. This is what the Receiver is charged with doing.

G&H is not in a substantially different position from other creditors. As a practical matter, it does not make sense to allow individual victims and creditors to intervene as parties. There are allegedly 1,400 victims who invested in approximately sixty securities offerings that raised more than \$250 million. There are dozens of creditors with divergent claims and interests. There is a complex web of some 120 Wextrust entities and affiliates operating throughout the world. In these circumstances, it would not be efficient or effective to permit individual creditors to intervene as parties. See, e.g., SEC v. Everest Mgmt. Corp., 475 F.2d 1236, 1240 (2d Cir. 1972) (affirming the district court's denial of intervention as of right on the ground that "the complicating effect of the additional issues and the additional parties outweighs any

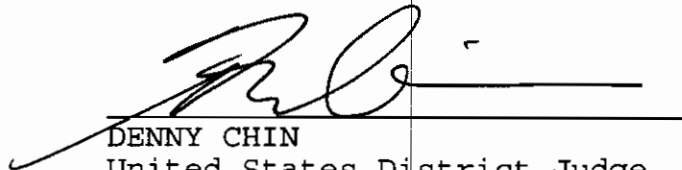
advantage of a single disposition of the common issues"); SEC v. Credit Bancorp, Ltd., 194 F.R.D. 457, 467 (S.D.N.Y. 2000) ("[T]he majority of courts to have considered the subject of investor intervention under analgous circumstances have denied intervention."); SEC v. Canadian Javelin, Ltd., 64 F.R.D. 648, 650 (S.D.N.Y. 1974) ("[I]ntervention as of right by victims of alleged securities frauds in an SEC enforcement action is inappropriate.").

G&H is entitled to notice of certain transactions and events. The amended receivership order provides for such notice. To the extent G&H believes the notice is inadequate or that other provisions of the receivership order should be modified, it will have the opportunity to be heard.

G&H's motion for leave to intervene is denied.

SO ORDERED.

Dated: New York, New York  
November 25, 2008

  
DENNY CHIN  
United States District Judge

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